CHEONG BEE YONG

v.

MBF FINANCE BHD & ANOR

HIGH COURT MALAYA, KUALA LUMPUR
AZMEL MAAMOR J
[ORIGINATING SUMMONS NO: S6-24-2576-99]
19 JANUARY 2001

LAND LAW: *Housing developers - Promotional brochure for sale of condominium units - Brochure stated developer would pay for interest on loan until Certificate of Fitness issued - Whether developer bound by words therein - Whether plaintiff relied on brochure to purchase condominium unit*

CONTRACT: *Loan - Interest payments - Interest payments on loan before issuance of Certificate of Fitness - Whether developer undertook to pay for interest before issuance of Certificate of Fitness in promotional brochure for sale of property - Whether plaintiff relied on such undertaking to purchase property*

The plaintiff purchased a single condominium unit from the developer through the second defendant. The promotional brochure for the sale of the condominium units stated that the purchaser would not have to pay housing loan interests before the issuance of the Certificate of Fitness for Occupation ('CF'). The promotional brochure also stated that the housing loan interests before the CF would be borne by the developer concerned.

Subsequently, the 1st defendant housing loan financier demanded payment for the housing loan interests accrued before the CF. The plaintiff now applied for a declaration that he should not be required to pay for the said interests.

Held:

[1] From the way the brochure was worded, it must be regarded as an undertaking by the developer to pay whatever expenses that arose before the issuance of the CF. The plaintiff purchased the condominium unit on the strength of such an undertaking. Under no circumstances should the plaintiff be asked to pay. Further, the 1st defendant was fully aware of the arrangement between the parties concerned. The case of *MBf Property Services & Anor v. Balasubramaniam K Arumugam* was followed.

[Declaration granted, costs to be borne by first defendant.]

Case(s) referred to:

MBf Property Services & Anor v. Balasubramaniam K Arumugam [2000] 2 CLJ 230 ***(foll)***

For the plaintiff - R Thayakugan; M/s Rajadevan & Assoc
For the 1st defendant - KY Khoo; M/s Heng & Mogan
For the 2nd defendant - ES Satharuban; M/s Satha & Co

Reported by Raja Vishnu

JUDGMENT

Azmel Maamor J:

The second defendant MBF Property Services Sdn Bhd was managing a number of property developers one of which was Kabra Holdings Sdn Bhd who was developing a housing project known as Ampang Hilir Kondominium which was situated in the Mukim of Ampang, Ulu Langat District, Selangor. In promoting the sales of units of the housing project the second defendant issued a brochure written with very attractive promises. Among others, the brochure stated:

> No Interest – Home Purchase Plan – We Pay For It Until Your Property Is Completed With Certificate of Fitness – SAVE $21,735.00 INTEREST.

The brochure also stated:

> Under this plan you essentially need only to pay the 10% downpayment (if you secure a 90% loan) and not a single sen UNTIL issuance of the Certificate of Fitness (CF). Any loan interests incurred in the meantime shall be borne by the developers.

On the basis of this attractive offer the plaintiff purchased a unit of Ampang Hilir Kondominium from Kabra Holdings Sdn. Bhd. at the price of RM184,700 *vide* sale and purchase agreement dated 18 September 1993 on which date the plaintiff had paid 10% of the purchase price. On 20 September 1993 the plaintiff was offerred by the first defendant, MBF Finance Bhd. a housing loan amounting to RM166,200 for payment of the balance of the purchase price of the said unit. Clause 8 of the letter of offer states:

> 8. Repayment.
>
> Interest on the loan shall be payable monthly until full disbursement thereof. Upon full disbursement of the loan, repayment will be by 360 equal monthly installment of principal and interest of $1,561.00; the first installment to be made on the first day of the month following next after the date of full disbursement.
>
> The monthly installment amount will be varied according to the change of interest rate as defined in Clause (6) herein.

Subsequently by a letter dated 22 September 1993 the first defendant caused an amendment to cl. 8 of the letter of offer as follows:

> Clause 8 – Repayment:
>
> Interest on the loan shall be payable monthly until the issuance of Certificate of Fitness for Occupation (CFO). Upon issuance of Certificate of Fitness for Occupation (CFO), repayment will be by 360 equal monthly installments of principal and interest of RM1,561.38, the first installment to be made on the first day of the month following next after the date of issuance of Certificate of Fitness for Occupation (CFO). However we reserve the right to effect the commencement of the monthly installment of principal and interest at our absolute discretion from time to time.
>
> The monthly installment amount will be varied according to the change of interest rate as defined in Clause (6) herein.

By a letter dated 3 September 1998 the second defendant indicated that they were ready to hand over vacant possession of the said premises to the plaintiff. However till today the Certificate of Fitness of Occupation of the said premises had not been issued by the relevant authorities. In the light of the above the plaintiff now sought from this course a declaration as follows:

> (a) Suatu Deklarasi bahawa Plaintif tidak perlu membayar balik Pinjaman perumahan, pokok dan faedah kepada Defendan Pertama dibawah Perjanjian Pinjaman bertarikh 30.10.93 sehingga pengeluaran Sijil Perakuan Menduduki untuk Premis yang dikenali sebagai C-02-3A Kondominium Sri Angsana Hilir.

From the facts and circumstances as stated above there appear to be a package between the developer and the financier to promote sale of the units constructed by the group of developers of which Karba Holdings Sdn. Bhd. was one of them. The developer through their manager, MBF Property Services Sdn. Bhd. (2nd defendant) had given the undertaking that the purchaser of the units would not have to pay even a sen until the CF is issued. And whatever expenses incurred before the issuance of the CF would be borne by the developer concerned. And it was because of this attractive offer that the plaintiff agreed to purchase the said unit as he would be able to save a minimum of RM21,735. In the circumstances it would be grossly unethical and certainly most unfair for the 1st defendant to ask the plaintiff to pay whatever interest accruing to the 1st defendant before the CF is issued, because such expenses would have to be borne by the developer as had been unequivocally stated by their manager, the 2nd defendant, in the brochure. The way the brochure was worded it must be regarded as an undertaking to pay whatever expenses that arose before the issuance of the CF and the plaintiff had acted by purchasing a unit on the strength of such undertaking. Under no

circumstances should the plaintiff be asked to pay. The 1st defendant was fully aware of the arrangement, as confirmed by the plaintiff in his affidavit. The case *MBF Property Services & Anor v. Balasubramaniam a/l K. Arumugam* [2000] 2 CLJ 230 is directly in point. Clause 8 as regards repayment in respect of the loan agreement was similarly worded. In this *Arumugam* case YA Gopal Sri Ram JCA said:

> The three documents; the sale and purchase agreement the agreement with the first appellant and the loan agreement with the second appellant, must be read together as they form part of the same transaction ...
>
> When the three documents are read as a whole, their effect is this. In the first place, the respondent shall purchase the property from the developer at a special price and term provided under the sale and purchase agreement. Thereafter, the first appellant shall keep the respondent indemnified and harmless in respect of any monitory payments due to the second appellant until the certificate of fitness of occupation is issued. Secondly, the second appellant will lend money to the respondent to pay for the purchase upon the mutual convenants contained in its letter of offer subject to the condition that the interest will be paid by the first appellant during the relevant period.

The Court of Appeal in the *Arumugam* case decided in favour of the purchaser respondent.

In the light of the similarities on the facts between this case and the *Arumugam* case as mentioned above I have no choice but to be bound by the decision of the Court of Appeal.

In the circumstances I granted the declaration as sought for by the plaintiff. I also ordered that the costs of this action be borne by the 1st defendant.